

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 2342 OF 2021.

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Most Rokeya Begum and others
....Petitioners.

-Versus-

Most. Parul Begum and others
.....opposite parties.

Mr. Emadul Haque, Advocate
.... for the petitioners.

Mr. M. Belayet Hossain, Advocate
..... for the opposite parties.

Heard on: 28.04.2024 and

Judgment on: 29.04.2024.

On an application of the petitioner Most Rokeya Begum and others under section 115(4) of the Code of Civil Procedure the leave was granted and the Rule was issued in the following terms: Let a Rule issue calling upon the opposite parties to show cause as to why the judgment and order dated 20.06.2021 passed by the learned District Judge, Barguna in Civil Revision No.19 of 2019 allowing the revision and setting-aside the order dated 17.09.2019 passed by the Assistant Judge, Amtoli, Barguna in Title Suit No.25 of 2014 accepting the local inspection report

of Advocate Commissioner dated 03.03.2015 and thereby rejecting the said Advocate Commissioner's report should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the petitioners as plaintiffs instituted Title Suit No.25 of 2014 in the Court of Assistant Judge, Amtali, Barguna for declaration of title over the suit land and further declaration that the deed No.6849 dated 25.07.1981 is illegal, void or not binding upon the plaintiffs.

The suit was contested by the defendant opposite party Nos.1-8 by filing separate written statements denying all the material assertions made in the plaint.

During the pendency of the suit the plaintiff-petitioners filed an application for local investigation under Order XXVI rule 9 read with section 151 of the Code of Civil Procedure.

The trial Court after hearing the parties and considering the facts and circumstances of the case allowed the said application and Advocate Mr. Md. Mozibour Rahman has been appointed as Advocate Commission for submitting the commission report.

The Advocate Commission obtained the issue of writ on 12.02.2015 and accordingly notifying the parties and thereafter investigated the suit plots on 28.02.2015 and accordingly submitted his report on 03.03.2015 wherein he mentioned that the plaintiffs as well as

the defendant No.7 and 8 and others elite of the locality were present at the time of commission.

Against the said Commission report the opposite party filed an application for written objection on 11.05.2015. Thereafter Mr. Mozibour Rahman, the learned Advocate Commission was examined and he exhibited all the relevant documents of his Commission report as exhibits-I, II and III. The trial Court after considering the facts and circumstance of the case accepted the said Advocate Commission report by its order dated 17.09.2019.

Against the said order the defendant opposite party filed civil revision No.19 of 2019 under Section 115(2) of the Code of Civil Procedure before the learned District Judge, Barguna. The learned District Judge, Barguna after hearing the parties and considering the report and the facts and circumstance of the case reversing and setting-aside the said order of the trial Court and rejected the Advocate Commission report dated 03.03.2015 by its judgment and order dated 20.06.2021.

Being aggrieved by and dissatisfied with the impugned judgment and order of the revisional Court the plaintiff-petitioners filed this revisional application under Section 115(4) of the Code of Civil Procedure and accordingly the leave was granted and Rule was issued.

Mr. M. Belayet Hossain, the learned Advocate enter appeared on behalf of the opposite parties through vokalatnama to oppose the Rule.

Mr. Emadul Haque, the learned Advocate appearing on behalf of the petitioners submit that the order of the revisional Court is erroneous one. He further submits that the learned Advocate Commissioner after notifying the parties did his commission in the suit plot and accordingly submitted the report. The trial Court after considering the report and the deposition of the Commissioner accepted the said Advocate Commission report. He further submits that though in the report the Advocate Commissioner mentioning the possession of the parties but as per decision of our Apex Court the finding of possession should be expunged. He cited the decision reported in 9 BLD (AD)-162.

Mr. M. Belayet Hossain, the learned Advocate appearing on behalf of the opposite parties submits that the Advocate Commissioner in his report mentioned possession of parties in the specific plots which is not permissible even in the issue of the writ there is no such terms and conditions. He further submits that as per decision reported in 54 DLR (HCD)-178 the trial Court may expunge the report so far as relates to the possession of the parties since it is the duty of the Court to consider the same on the basis of the evidence on record as adduced by the parties.

I have heard the learned Advocates of both the sides, perused the impugned judgment and order of the Courts below and the papers and documents as available on the record.

It appears that on the application of the plaintiff petitioners the learned Advocate Mr. Mozibour Rahman was appointed as Advocate

Commission and accordingly after notifying the parties he visited the suit plot and submitted his report on 03.03.2015. The defendant side filed written objection against the said Advocate Commission report. But the trial Court after considering the facts and circumstance of the case accepted the Advocate Commission report as it is.

Against the said order the defendant opposite parties filed revisional application under Section 115 (2) of the Code of Civil Procedure before the learned District Judge, who after hearing the parties and considering the evidence on record and the facts and circumstance of the case disallowing the Advocate Commission report dated 03.03.2015.

As per provision of law the Advocate Commission only to submit a report regarding the structures as situated in the place of occurrence as per writ. But it appears that the learned advocate Commission in his report stated that there are some structures of the plaintiff-petitioners. But it is settled principle that the possession of the parties should not be stated in the Advocate Commission report. I have considered the decision of the case of *Sukumar Sen and others Vs. Guranga Bejoy Dey and others reported in 9 BLD (AD)-162* and the decision referred by the opposite party the case of *Sufia Islam Shila and another Vs. Shakhawat Hossain and others reported in 54 DLR (HCD)-178*. In the aforesaid two decisions it is settled that the Court has option not to accept Advocate

Commission report and can accept the report by expunging the findings of possession stated in the report.

Considering the aforesaid facts and the cited decision it is better to expunge the finding of possession as stated in the commission report. Both the sides agreed that the Advocate Commission report may be accepted by expunging the findings of possession.

Having considered the facts I am inclined to dispose of the Rule.

In the result, the Rule is disposed of with the findings that the Advocate Commission report dated 03.03.2015 should be accepted by expunging the findings of possession of the parties.

However, the petitioner in his Advocate Commission report mentioned the wrong Section which is irrelevant in the instant case.

Since this is a long pending case the trial Court is directed to dispose of the suit as early as possible preferably within 06 (six) months from the date of receipt of this order in accordance with law.

The order of stay granted earlier by this is hereby recalled and vacated.

Communicate the order at once.